

AMENDED IN ASSEMBLY APRIL 12, 2004

AMENDED IN ASSEMBLY MARCH 18, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 1874**

**Introduced by Assembly Member Cohn**

February 3, 2004

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An act to add Section 14666.9 to the Government Code, and to amend Section 671.5 of, and to add Section 679.1 to, the Streets and Highways Code, relating to telecommunications.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1874, as amended, Cohn. Telecommunications: ~~Broadband~~ *Information and Advanced Communications* Deployment Act of 2004.

*Existing law provides that the Department of Transportation shall have full possession and control of the state highways and associated property. Existing law requires the department to approve or deny an application from an applicant for an encroachment permit within 60 days of receiving a completed application that meets specified requirements. Existing law provides that the department's failure to notify an applicant within the required time period that a permit is denied is deemed to constitute approval of the permit. Existing law authorizes an applicant for an encroachment permit to appeal to the director of the department for a final determination of the department's denial of an application. Existing law requires the director to make a final written determination within 60 days after receipt of an applicant's appeal. Existing law entitles a city, municipal utility district, municipal water district, or metropolitan water district to a blanket permit,*

*renewable annually, for the installation of its service connections and for ordinary maintenance of its facilities located or installed in state highways. Existing law authorizes the department to revoke the blanket permit under certain conditions.*

*This bill would adopt the Information and Advanced Communications Deployment Act of 2004. The act would make it the public policy of the state to, among other things, promote the availability of a wide range of communications services to residents of California, to improve the opportunities for economic development and delivery of communications services, and to ensure that the rules, regulations, and procedures for access to public rights-of-ways advance these policies. The bill would change the number of days the department has to approve or deny an application for an encroachment permit and the number of days the director has to make a final determination of the applicant's appeal to 45 days. The bill would also entitle a communications provider to a blanket permit, renewable annually, for the installation of its service connections and for operational repair, maintenance, or alteration of its facilities and service connections located or installed in state highways. The bill would authorize the department to revoke the blanket permit under certain conditions.*

~~Existing law requires the Director of General Services, with the approval of the state agency concerned, to negotiate, in the name of the state, access to state-owned property not used for highway purposes, for those purposes and subject to those conditions, limitations, restrictions, and reservations determined by the director to be in the interest of the state. Existing law provides that this requirement to negotiate access applies to telecommunications and information technologies. Existing law requires that, to the extent permitted under existing law, the Director of General Services determine the amount of consideration for, and the means of access, which includes, but is not limited to, a lease, permit, or other form of providing a monetary or service consideration for the access.~~

~~Existing law imposes similar requirements on the Director of Transportation with respect to state-owned highway rights-of-way.~~

~~Existing law requires the Director of General Services to compile and maintain an inventory of state-owned real property, excluding certain property, that may be available for lease to providers of wireless telecommunications services for location of wireless~~



telecommunications facilities, and to provide a requesting party, upon payment of any applicable fee, with a copy of the inventory.

~~This bill would adopt the Broadband Deployment Act of 2004 to require the Director of General Services, in consultation with the Director of Transportation, to develop a standardized application form to be used by a provider of telecommunications or information technologies for contracting with the director for access to state-owned property or for contracting with the Director of Transportation for access to state-owned highway rights of way. The bill would require The Director of General Services and the Director of Transportation to promptly and reasonably act upon an application for access to state-owned property or highway rights of way, to approve or deny an application within 45 days of the making of the application, and where an application is denied because it is incomplete, require that the denial identify what additional information or other matter is necessary to complete the application. The bill would require the Director of General Services and the Director of Transportation to adopt standardized contractual provisions to be included in a contract for access to state-owned property or a state-owned highway right of way, that require restoration of the property to preexisting condition, establish a construction schedule, and any other terms necessary to ensure that public disruption is minimized, while providing reasonable access to state properties and state highway rights of way for the expansion of telecommunications and information technologies infrastructure. The bill would provide for mediation and arbitration of any disputes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares the*
- 2     *following:*
- 3     (a) *Information and advanced communications services are the*
- 4     *foundations for California's continued technological and*
- 5     *economic leadership. It has been estimated that the widespread*
- 6     *deployment of information and advanced communications*
- 7     *services networks can generate an increase of over \$300 billion in*
- 8     *incremental GSP and nearly two million new jobs for the state of*
- 9     *California over a ten-year period.*



1 (b) Accelerated deployment of information and advanced  
2 communication services infrastructure is a critical component of  
3 the state's economic development and an improved quality of life  
4 for its constituency.

5 (c) Rights-of-way and public lands access is one of the most  
6 important considerations for companies considering major new  
7 investments in information and advanced communications  
8 services infrastructure. In order to encourage accelerated  
9 deployment of information and advanced communications  
10 services in California, it is important that rights-of-way access not  
11 be a barrier or impediment to investment in broadband networks.

12 (d) In order to support the goal of accelerated deployment of  
13 information and advanced communications services, state entities  
14 should ensure prompt access to public lands by expediting and  
15 streamlining rights-of-way access for the deployment of  
16 information and advanced communications services  
17 infrastructure.

18 SEC. 2. Section 14666.9 is added to the Government Code, to  
19 read:

20 14666.9. (a) This section shall be known, and may be cited,  
21 ~~as the Broadband~~ as, the Information and Advanced  
22 Communications Deployment Act of 2004.

23 ~~(b) In consultation with the Director of Transportation, the~~

24 (b) It is the public policy of the state to do all of the following:

25 (1) Promote the availability of a wide range of communications  
26 services to residents of this state at reasonable cost, including the  
27 rapid accelerated deployment of information and advanced  
28 communications services networks in the State of California.

29 (2) Encourage the introduction of new services, the entry of  
30 new providers, the development of new technologies, and increase  
31 investment in the communication infrastructure of this state.

32 (3) Improve the opportunities for economic development and  
33 the delivery of communications services.

34 (4) Ensure that the rules, regulations and procedures for access  
35 to public rights-of-ways advance these policies.

36 (c) Nothing in this section alters the rights provided to  
37 telegraph or telephone corporations pursuant to Section 7901 of  
38 the Public Utilities Code.

39 SEC. 3. Section 671.5 of the Streets and Highways Code is  
40 amended to read:

671.5. (a) The department shall either approve or deny an application from an applicant for an encroachment permit within 45 days of receiving a completed application, as determined by the department. An application for an encroachment permit is complete when all other statutory requirements, including the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), have been complied with. The department's failure to notify the applicant within that ~~60-day~~ 45-day period that the permit is denied shall be deemed to constitute approval of the permit. Thereafter, upon notifying the department, the applicant may act in accordance with its permit application, as if the permit had been approved.

(b) If the department denies an application for an encroachment permit, it shall, at the time of notifying the applicant of the denial, furnish to the applicant a detailed explanation of the reason for the denial.

(c) The department shall adopt regulations prescribing procedures for an applicant to appeal to the director for a final determination of the department's denial of an application. The appeal shall be made in writing to the director. There shall be a final written determination by the director within ~~60~~ 45 calendar days after receipt of the applicant's written appeal. The adopted regulations shall require the appellant to pay to the department a fee of not more than 50 percent of the estimated administrative cost to the department of conducting the appeal.

(d) Nothing in this section precludes an applicant and the department from mutually agreeing to an extension of any time limit provided by this section.

*SEC. 4. Section 679.1 is added to the Streets and Highways Code, to read:*

*679.1. Any communications provider is entitled to a blanket permit, renewable annually, for the installation of its service connections and for operation, repair, maintenance, or alteration of its facilities and service connections, located or installed in state highways. However, the department may revoke the blanket permit if the permittee fails to comply with the provisions of this article, after reasonable notice and opportunity to cure is provided to the permittee.*

~~director shall develop a standardized application form to be used by a provider of telecommunications or information technologies~~

~~for contracting with the director for access to state-owned property or for contracting with the Director of Transportation for access to state-owned highway rights-of-way.~~

~~(c) (1) The director shall promptly and reasonably act upon an application for access to state-owned property. The director shall approve or deny an application within 45 days of the filing of the application. If the application is denied because it is incomplete, the denial shall identify what additional information or other matter is necessary to complete the application.~~

~~(2) The Director of Transportation shall promptly and reasonably act upon an application for access to state-owned highway rights-of-way. The Director of Transportation shall approve or deny an application within 45 days of the filing of the application. If the application is denied because it is incomplete, the denial shall identify what additional information or other matter is necessary to complete the application.~~

~~(d) (1) The director shall adopt standardized contractual provisions to be included in a contract for access to state-owned property that require restoration of the property to preexisting condition. Every contract shall contain an agreed-upon construction schedule and any other terms necessary to ensure that public disruption is minimized while providing reasonable access to state properties for the expansion of telecommunications and information technologies infrastructure.~~

~~(2) The Director of Transportation, in consultation with the director, shall adopt standardized contractual provisions to be included in any contract for access to state-owned highway rights-of-way, that minimize disruption to state-owned highway rights-of-way, that require reasonably prompt repair of any surface or subterranean damage or disruption to the rights-of-way, and that will restore the rights-of-way to preexisting condition. Every contract shall contain an agreed-upon construction schedule and any other terms necessary to ensure that public disruption is minimized while providing reasonable access to state-owned highway rights-of-way for the expansion of telecommunications and information technologies infrastructure.~~

~~(e) (1) If the applicant and the director are unable to reach agreement on a construction schedule, contractual terms necessary to ensure that public disruption is minimized, contractual terms for restoration of the property to preexisting condition, or any other~~

1 contractual terms the director seeks to impose to protect the public  
2 health, safety, and welfare, the applicant may request appointment  
3 of a mediator.

4 (2) ~~If the applicant and the Director of Transportation are~~  
5 ~~unable to reach agreement on a construction schedule, contractual~~  
6 ~~terms necessary to ensure that public disruption is minimized,~~  
7 ~~contractual terms for restoration of the state-owned highway~~  
8 ~~rights-of-way to preexisting condition, or any other contractual~~  
9 ~~terms the Director of Transportation seeks to impose to protect the~~  
10 ~~public health, safety, and welfare, the applicant may request~~  
11 ~~appointment of a mediator.~~

12 (3) ~~The director shall establish procedures for the qualification~~  
13 ~~and appointment of mediators. A mediator shall be appointed~~  
14 ~~within seven days of the applicant requesting appointment and the~~  
15 ~~mediator shall promptly commence the mediation process and if~~  
16 ~~the mediation is unsuccessful in resolving any dispute, issue~~  
17 ~~recommendations within 30 days for a resolution of any~~  
18 ~~disagreement.~~

19 (4) ~~If either party is unwilling to accept the recommendations~~  
20 ~~of the mediator for resolution of the dispute, the party may within~~  
21 ~~30 days of receipt of the recommendations, request binding~~  
22 ~~arbitration. The director shall establish procedures for the~~  
23 ~~appointment of impartial third party arbitrators and may contract~~  
24 ~~with an established existing arbitration service to perform the~~  
25 ~~arbitrations. The rules shall provide for prompt appointment of an~~  
26 ~~arbitrator, that the arbitration be concluded and an award issued~~  
27 ~~within 60 days. The parties may agree to one extension for up to~~  
28 ~~30 days for conclusion of the arbitration process.~~

